

Exhibit 3

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In Re: Pharmaceutical Industry Average MDL No. 1456
Wholesale Price Litigation Civil Action No.
01-CV-12257-PBS

This Document Relates to State of
Nevada v. Abbott Laboratories, et al.,
CA NO. 02-CV-00260-ECR (Nevada I), and

State of Nevada v. American Home Products
et al., CA No. 02-CV-12086-PBS (Nevada II)

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DEPOSITION OF

PATRICK CATES

Thursday, December 22, 2005

Carson City, Nevada

APPEARANCES: (See separate page)

Reported by: Lesley A. Clarkson, CCR #182
SUNSHINE REPORTING SERVICES
(775) 323-3411 * (775) 883-7950

1 MR. LITOW: Anybody else?

2 BY MR. LITOW:

3 Q Mr. Cates, could you please state and spell your
4 name for the record.

5 A My name is Patrick Cates. That's C-a-t-e-s.

6 Q What's your current business address?

7 A 1100 East William Street, Carson City, Nevada.

8 Q Have you ever been deposed before?

9 A No.

10 Q I'll just explain the process a little bit for
11 you. I'm going to ask the questions, you as the deponent
12 will respond to the questions. You need to respond verbally
13 so the court reporter can take down a response.

14 A Okay.

15 Q At times your attorney may object. Unless it's
16 instructed by him or her not to answer, you are still
17 required to answer the question, even though there's an
18 objection.

19 If you don't understand a question, please let me
20 know, and I'll be happy to clarify. If you do not ask for
21 clarification, I'll just assume that you understood the
22 question.

23 Please let me know if you want to take a break at
24 any time and I'll be happy to do so. I just ask that you
25 finish answering whatever question was posed.

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1 reimbursement to pharmacies for drugs, or is that handled by

2 First Health?

3 A It's handled by First Health through the point of
4 sale system. Or the accounting unit does in the aggregate
5 reconcile those payments and make sure they are reconciled
6 in our state accounting system and draws in the federal
7 funds and that sort of thing, but the actual payment is
8 coming through First Health System.

9 Q When did you become the -- strike that.

10 When did you attain your current position?

11 A January last year.

12 Q January of '04?

13 A No, I'm sorry, January of '05.

14 Q '05?

15 A Yeah. It's not '06 quite yet, is it.

16 Q When did you become, initially become manager of
17 the budget and accounting unit?

18 A Probably October of '04, I believe it was October,
19 November. Around there.

20 Q So from about roughly from the year 2000 through
21 October of '04 is when you were in the rates unit; is that
22 correct?

23 A Yes.

24 Q Is the budget and accounting unit also responsible
25 for keeping track of manufacturer rebates received by the

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1 state?

2 A Yes.

3 Q We will talk a little bit more about rebates

4 later, but do the rebates actually come into the budget and

5 accounting office directly from the manufacturers?

6 A Yes, they do.

7 Q And are they paid on a quarterly basis, a monthly

8 basis, or does it depend on the manufacturer?

9 A I'm not sure, actually. An individual does that

10 several layers down in the organization.

11 Q And you are also responsible for oversight of the

12 rates unit; is that correct?

13 A That's correct.

14 Q The budget and accounting and the rates unit are

15 separate units?

16 A I'm sorry.

17 Q Are the rates and budget and accounting separate

18 departments?

19 A Yes, they both have ASO threes over them as

20 managers.

21 Q So who took over as manager of the rates unit

22 after you left that position?

23 A I had an interim acting chief. His name was John

24 McNabb. And I just recently hired a permanent chief by the

25 name of John Kasnick.

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1 BY MR. LITOW:

2 Q Just take a moment, Mr. Cates, to review this
3 document.

4 A Yeah, I'm familiar with this.

5 Q Have you seen this document before?

6 A Yes.

7 Q What is this document?

8 A It's an e-mail from our administrator concerning
9 retention of records related to this litigation instructing
10 staff to make sure that nothing is destroyed that could
11 potentially relate to this case.

12 Q Did you ever receive such a notice like this
13 before relating to this case?

14 A Not that I can recall. I may have, but not that I
15 can recall.

16 Q I'd like to refer you to the first sentence, the
17 first paragraph. It states, "As many of you are aware, the
18 state of Nevada is involved in litigation entitled State of
19 Nevada v. American Home Products Corp. et al. The lawsuit
20 is also known as the Average Wholesale Price Litigation or
21 AWP litigation."

22 Do you see that?

23 A Yes.

24 Q When did you first become aware of that action?

25 A I'm not sure exactly when. Probably within the
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1 last year.

2 Q But you weren't aware of it in 2002 when it was
3 filed; is that correct?

4 A No, I wasn't.

5 Q I direct your attention to the second paragraph,
6 the first bolded sentence there. It states, "It is
7 extremely important that any documents pertaining to the
8 litigation are identified" --

9 A I'm sorry, I'm not in the same place you are.

10 Q Second paragraph, first bolded sentence.

11 A Okay, I'm with you now.

12 Q It states, "It is extremely important that any
13 documents pertaining to the litigation are identified,
14 separated from other files and protected."

15 Do you see that?

16 A Yes.

17 Q Prior to receiving this e-mail, had you ever
18 received that particular instruction before in relation to
19 this case?

20 A Not to my recollection, no.

21 Q Have you taken any action since receiving this
22 e-mail to comply with the directives of that, with that
23 particular directive?

24 A Yeah, I discussed it briefly with my managers.

25 And about the only records that we potentially have are in
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1 the rates unit or with our staff that does the rebate

2 program. I told them not to destroy those.

3 Q But you hadn't had that kind of talk with them

4 prior to receiving this e-mail; is that correct?

5 A No. But by the same token during my tenure, we

6 have never done any wholesale shredding, destruction of old

7 documents. Despite the retention schedule, we haven't

8 systematically gone through and done that.

9 Q Okay. What about your e-mails, do you ever delete

10 some of your e-mails?

11 A Oh, sure.

12 Q What types of e-mails would you delete?

13 A Things that aren't relevant to my job. I tend to

14 get cc'd on everything, most of which isn't germane to me.

15 Q I'd like to direct your attention to the sixth

16 paragraph, the last sentence of that paragraph, which

17 states, "Again, most of you have seen this document before,

18 as you have been involved in searching for and producing

19 documents responsive to the questions and requests from your

20 department's files, your files, or the files of others."

21 Do you see that?

22 A Yes.

23 Q Did you search your files for documents responsive

24 to defendant's documents requests?

25 A I think I did do, I recall doing a brief search of
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1 my files, my personal files, and I don't recollect having

2 anything of relevance.

3 Q Do you know if the files of the people who report

4 to you were searched for documents responsive to defendant's

5 requests?

6 A I don't know that.

7 Q I'd like to direct your attention to the second

8 page of the e-mail.

9 A Okay.

10 Q If you could just take a moment to review this

11 list of categories and identify any category in which you or

12 the rates, you or people who report to you might have

13 documents relating to that category.

14 A Okay. (Reviewing document.)

15 The first item, state's reimbursement of or

16 expenditures for pharmaceutical products or dispensing fees.

17 The general accounting records like we looked at in the

18 other exhibit.

19 The third item, methodologies for pricing and/or

20 setting of reimbursement rates.

21 Q What type of documents would you have that relate

22 to that?

23 A The rates unit maintains the rate schedules, and

24 they use the state plan amendments. I would describe that

25 as well.

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1 exhibits be returned to us for destruction. If you have any
2 questions, you can contact Hagens Berman at 206-623-7292 and
3 ask for either me, Jeniphr Breckenridge, or my partner, Sean
4 Matt.

5 Tim, do you have anything to add?

6 MR. TERRY: I think the only thing I'd add for the
7 record and for those of you who are on the phone is an
8 additional statement to the nature of the extreme
9 sensitivity of this document. It involves ongoing criminal
10 investigations and identifies targets of those criminal
11 investigations. And so anyone who has a copy of this
12 document I would ask you to immediately put it in a sealed
13 envelope and return it to the Hagens Berman law firm as
14 Jeniphr as indicated. And we would appreciate your
15 cooperation.

16 MS. BRECKENRIDGE: If you have any problems
17 complying with this request or if there are any unusual
18 circumstances, please contact us today. Thank you.

19 And I apologize.

20 (Exhibit 4 withdrawn.)

21 BY MR. LITOW:

22 Q Mr. Cates, prior to today, do you ever recall
23 seeing a monthly case report listing various cases that
24 Nevada Medicaid is involved in?

25 A No.

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1 MR. LITOW: I have got no further questions. She
2 may have some questions for you.

3 MS. BRECKENRIDGE: We don't have any questions.

4 MR. LITOW: People on the phone.

5 Okay. We are finished. We will be back at one
6 o'clock.

7 (11:26 a.m., deposition concluded.)

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